

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1402 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PARSUMAL CHETUMAL SANTANI

Versus

SUGNOMAL GODHUMAL SANTANI

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Appearance:

MR MD PANDYA for Petitioners

MR K D Shah for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/03/98

ORAL JUDGEMENT

Heard Mr M D Pandya, learned Advocate for the petitioner and Mr K D Shah, learned Advocate for respondent No.1.

2. By the impugned order dated 1.10.1993, Civil Judge, (SD), Godhra has permitted the plaintiff's Advocate to cross-examine defendant No.3. The necessary

facts are that the plaintiff has filed Special Civil Suit No.10/83 seeking relief of declaration relating to the legality of the Will dated 28.12.1978 executed by defendant No.1 and his brother deceased Godhumal, partner of plaintiff and defendants No.2, 3, 4, 5 and the father-in-law of defendant No.6. Defendant No.3 filed written statement and supported the plaintiff's case. It is categorically stated by defendant No.3 that the relief claimed by the plaintiff are true and they should be granted. He has further stated that the plaintiff's suit be decreed with cost against the defendant concerned. On 1.10.93, examination-in-chief of the defendant No.3 was recorded. The Advocate for the plaintiff wanted to cross-examine him. This was opposed by the Advocate for defendants No.1, and 2 to 7. However, the Trial Judge, by the impugned order, permitted to cross-examine defendant No.3. From the facts of the case, it cannot be said that the interest of the plaintiff and defendant No.3 is adverse. In view of this, the learned Judge has committed material irregularity in exercising jurisdiction in allowing the plaintiff to cross-examine defendant No.3.

2. In view of the aforesaid, the Revision Application is allowed. The impugned order dated 1.10.93 is quashed and set aside. Rule made absolute accordingly.

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msp